

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**AFFIDAVIT OF ROBERT A. FLEURY IN  
SUPPORT OF LIQUIDATOR'S MOTION FOR  
APPROVAL OF SETTLEMENT WITH CLIFTON MARSHALL**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement with Clifton Marshall (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into a Settlement Agreement and Mutual Release by and between the Liquidator and Clifton Marshall (the "Settlement Agreement").

3. Prior to the commencement of the Liquidation Proceeding,<sup>1</sup> Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Noble Trust's clients' funds were maintained as individual management accounts or

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<sup>1</sup> Capitalized terms used in this Affidavit and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Motion.

individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives.

4. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients' trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC ("Sierra"). Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust's clients.

5. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. In 2006 and 2007, Sierra stopped paying monthly "interest" payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in Sierra. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make the monthly payments. Noble Trust also used funds from newer investors to repay older investors' principal investment in Sierra.

6. One of the methods Lindsey used to try to generate the necessary income to conceal the Sierra losses was by dealing in certain high-premium, high-value life insurance policies. Lindsey hoped (1) to receive large commissions that insurers paid to brokers or agents that successfully sent the insurers an applicant for which a policy was issued, and (2) to sell the insurance policies on the secondary market. To succeed in this plan, Lindsey needed a ready source of applicants for insurance policies who would agree in advance to sell their interests in the policies to Noble Trust. Lindsey turned to a network of people, including Mr. Marshall, to find such applicants.

7. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

8. The Liquidator commenced litigation in this Court against various individuals and entities involved in the insurance policy scheme, including Clifton Marshall and other defendants, in Hildreth v. Marino et al., Docket No. 217-2010-CV-00175 (the “Action”). Pursuant to the Action, the Liquidator alleges certain unjust enrichment, Racketeer Influenced and Corrupt Organizations Act, civil conspiracy, aiding and abetting a breach of fiduciary duty, and indemnification claims against Mr. Marshall and other defendants who, among other things, encouraged and assisted prospective insurance applicants to falsify financial and other application materials in order to qualify for the insurance policies.

9. The Liquidator has asserted claims against Mr. Marshall arising out of his participation in the Noble Ponzi scheme and for damages on account thereof. The Liquidator’s Writ specifies damages arising from that scheme that total at least \$2,065,076, comprised of compensation paid for the purchase of fraudulently procured policies and for referral fees. Although the exact extent of Mr. Marshall’s liability has not been determined with certainty, the Liquidator has asserted claims against Mr. Marshall and other co-defendants, which provide for joint and several liability for all damages arising from the scheme, as well as treble damages and attorneys’ fees incurred. Mr. Marshall presently asserts an inability to pay a judgment for the damages caused and has submitted a sworn financial affidavit to the Liquidator supporting his assertions.

10. The Liquidator has reached a settlement with defendant Clifton Marshall. Under the Settlement Agreement, Mr. Marshall has paid a confidential sum to the Liquidator (the “Settlement Funds”), which the Liquidator has agreed to hold in an escrow account pending approval of the Settlement Agreement by this Court. Upon final Court approval, the Settlement Funds will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

11. Pursuant to the Settlement Agreement, the Liquidator and Mr. Marshall shall mutually release each other from any and all claims, including those that arise out of or relate in any way to the Action, the claims in the Writ of Summons, or related transactions. Without limiting the generality of the release, Mr. Marshall specifically waives any and all claims or proofs of claims (and the right to file or amend any claims or proofs of claims) in the Liquidation Proceeding.

12. The Liquidator believes the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations. In order to avoid the additional time, expense, and resources that continued litigation of the Action and any subsequent collection proceedings against Mr. Marshall would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator negotiated the Settlement Agreement, which by its terms does not become effective unless and until it is approved by this Court.

13. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with Mr. Marshall, and provides for, among other things, (i) payment of the Settlement Funds, eliminating any collection risk if the Liquidator were compelled to engage in further litigation to enforce any judgments

against Mr. Marshall, and (ii) release of any and all of the claims in the Liquidation Proceeding that Mr. Marshall filed or could have filed.

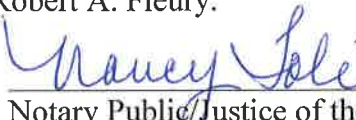
14. The Liquidator therefore believes that the Settlement Agreement is fair and reasonable and that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending disputes with Mr. Marshall in the Action on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

Signed under the pains and penalties of perjury this 21<sup>st</sup> day of February, 2014.

  
Robert A. Fleury

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

Signed before me on February 21, 2014 by Robert A. Fleury.

  
Notary Public/Justice of the Peace  
My Commission Expires



## CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.<sup>1</sup>

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<sup>1</sup> Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service on claimants and other parties in interest.

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